IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH AT HYDERABAD

THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

WRIT PETITION No. 16041 OF 2006

DATED: 18-12-2007

BETWEEN:

V. Subba Raju and another

.....Petitioners

AND

The Collector, E.G Distric,t Kakinada and two others

.....Respondents

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

WRIT PETITION No. 16041 OF 2006

ORDER:

This writ petition is filed for issue of a writ of mandamus to declare notification dated 23-6-2006 issued under Section 4(1) of the Land Acquisition Act, 1894 (for short, 'the Act'), whereby the extents of Acs.2.75 cents in S.No. 68/5; Ac.0.45 cents in S.No. 81/1B, Ac.0.35 cents in S.No. 81/2B and Ac.1.52 cents in S.No.81/3B in Mulapeta Village, U. Kothapalli Mandal, East Godavari District were acquired as illegal and arbitrary.

The petitioners assail the proposed land acquisition proceedings on two grounds viz., that the respondents dispensed with the enquiry under Section 5-A of the Act by invoking the urgency provisions under Section 17(4) of the Act and there is inconsistency in the dates of publication of notification under Section 4(1) and declaration under Section 6 of the Act.

At the hearing Sri M. Ram Mohan, learned counsel representing the petitioner reiterated the two contentions raised in the writ petition.

As regards the first contention, a perusal of the notification under Section 4(1) shows that the lands belonging to the petitioners are proposed to be acquired for provision of house sites to the weaker sections under Indiramma Programme. In my considered opinion, invocation of urgency clause for providing house sites is not warranted because, the respondents are not justified in dispensing with the enquiry having regard to the nature of and purpose for which the acquisition is meant viz., providing house sites which is not that emergent in nature as to warrant dispensing with enquiry. In a number of writ petitions, this Court had consistently taken the view that in cases of this nature, invocation of urgency clause under Section 17(4) cannot be sustained. Therefore, this part of notification dated 9-6-2006 as published in gazette on 23-6-2006 is set aside. The respondents are directed to hold enquiry under Section 5-A of the Act and give the petitioners an opportunity of personal hearing before seeking to proceed further with the acquisition.

With respect to the second contention of Sri Ram Mohan, I am not inclined to accept the same. It is no doubt true that there is inconsistency in the stand taken by respondent Nos.1 and 2 who filed separate counter affidavits. Since the declaration under Section 6 is set aside, in my opinion, the inconsistency in the publication of dates of notification under Section 4(1) and Section 6 declaration ceases to have any relevance. Whether notification under Section 4(1) should have been published on 23-6-2006 or 9-6-2006 would not have any relevancy with the setting aside of the declaration which was published in the gazette on 9-6-2006 ahead of publication of notification under Section 4(1).

In view of the same, the writ petition is allowed to the extent indicated above. The respondents are free to hold enquiry under Section 5-A of the Act in pursuance of notification dated 9-6-2006 issued under Section 4(1) of the Act.

As a sequel to the above, WPMP No. 19990 of 2006 and WVMP No. 2055 of 2006 are disposed of as infructuous.

_____

C.V. NAGARJUNA REDDY, J

18-12-2007
ks